



State of Washington
Department of Ecology
Office of Columbia River
DRAFT REPORT OF EXAMINATION
FOR TRUST WATER RIGHT

File NR CS3-145472CL
WR Doc ID 5163102

Date of First Use Asserted on Claim BEFORE 1880	CLAIM NUMBER S3-145472CL	TRUST TERM Permanent	END TRUST TERM Permanent
WATER RIGHT OWNER MARTY HALL - M&I LIVESTOCK 1944 TUCANNON RD POMEROY WA 99347			

Purpose and Quantity

Water will be placed in the Trust Water Rights Program for the purpose of instream flow, with quantities allocated to primary and secondary reaches in the following manner.

Period	Primary Reach		Secondary Reach	
	Flow (cfs)	Acre-feet	Flow (cfs)	Acre-feet
04/01 -10/15	0.713	29.40	0.04	9.18
ANNUAL TOTAL		29.40		9.18

	Secondary Reach	
	Qa(Acre-feet)	Qi (CFS)
Jan	0	0
Feb	0	0
Mar	0	0
April	0	0
May	1.00	0.02
June	1.84	0.03
July	2.75	0.04
Aug	2.20	0.03
Sep	1.30	0.02
Oct	0.09	0
Nov	0	0
Dec	0	0
Total	9.18	-

“Primary reach” means that portion of a water body that benefits from both the former consumptive use and former return flow waters of a water right. “Secondary reach” means that portion of a water body that benefits only from the former consumptive portion of a water right.

Trust Water Right Place of Use

WATERBODY	TRIBUTARY TO	COUNTY	WATER RESOURCE INVENTORY AREA
Tucannon River	Snake River	Columbia	35-Middle Snake

REACH	WATERBODY	RIVER MI	TWN	RNG	SEC	Q	LATITUDE	LONGITUDE
Begin Primary Reach	Tucannon River	18.2	11N	39E.W.M.	2	NE		
End Primary Reach/ Begin Secondary Reach	Tucannon River	17.3	11N	39E.W.M.	2	NW		
	Snake and Columbia Rivers	0	8N	30E.W.M.	2	NW		

PORTION OF RIGHT NOT CONVEYED INTO TRUST

Date of First Use Asserted on Claim
Pre- 1880

CLAIM NUMBER
S3-145472CL

MAILING ADDRESS
MARTY HALL - M&I LIVESTOCK
1944 TUCANNON RD
POMEROY WA 99347

Total Quantity Authorized for Diversion

DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
0.245	CFS	44.31

Purpose

PURPOSE	DIVERSION RATE			ANNUAL QUANTITY (AF/YR)		PERIOD OF USE (mm/dd)
	ADDITIVE	NON-ADDITIVE	UNITS	ADDITIVE	NON-ADDITIVE	
Irrigation	0.245			44.31		04/01 - 10/15

Place of Use (See Attached Map)**LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE**

E½ SENW (portion of), W½SWNE, W½NWSE, NW¼SWSE, and the E½NESW (portion of) all in Sec. 2, of T. 11 N., R. 39 E.W.M., Columbia County, Washington

Proposed Works

Replacement of the current hand and wheel line irrigation system with a center pivot system. The proposed system would divert less water, reduce irrigation acreage and provide trust water to remain instream in perpetuity.

Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
Completed	Completed	10/31/2014

Measurement of Water Use

How often must water use be measured?	Weekly
How often must water use data be reported to Ecology?	Annually on January 31 of the following year
What volume should be reported?	Total Annual Volume (acre-feet)
What rate should be reported?	Annual Peak Rate of Diversion (cfs)

Provisions for the Portion of the Water Right remaining with the Landowner:

Measurements, Monitoring, Metering and Reporting

An approved measuring device must be installed and maintained for each of the sources identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173 which describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition the Department of Ecology for modifications to some of the requirements.

Recorded water use data shall be submitted via the Internet. To set up an Internet reporting account, contact the Central Regional Office. If you do not have Internet access, you can still submit hard copies by contacting the Central Regional Office for forms to submit your water use data.

Fish Screen

The intake(s) shall be screened in accordance with Department of Fish and Wildlife screening criteria.

Water Use Efficiency

The water right holder is required to maintain efficient water delivery systems and use of up-to-date water conservation practices consistent with RCW 90.03.005.

Schedule and Inspections

Department of Ecology personnel, upon presentation of proper credentials shall have access at reasonable times to the project location and to inspect at reasonable times records of water use, wells, diversions, measuring devices and associated distribution systems for compliance with water law.

Nothing in this permit shall be construed as excusing the permittee from compliance with any applicable federal, state, or local statutes, ordinances or regulations including those administered by local agencies under the Shorelines Management Act of 1971

Real Estate Excise Tax

This decision may indicate a Real Estate Excise Tax liability for the seller of water rights. The Department of Revenue has requested notification of potentially taxable water right related actions and, therefore, will be given notice of this decision, including document copies. Please contact the state Department of Revenue to obtain specific requirements for your project. Phone: (360) 570-3265. The mailing address is: Department of Revenue, Real Estate Excise Tax, PO Box 47477, Olympia, WA 98504-7477 Internet: <http://dor.wa.gov/>. E-mail: REETSP@DOR.WA.GOV.

Findings of Facts

Upon reviewing the investigator's report, I find all facts relevant and material to the subject application have been thoroughly investigated. Furthermore, I concur with the investigator that there will be no impairment of existing rights and that there will be no detriment to the public interest.

Therefore, I ORDER approval of Change Application No. CS3-145472CL, subject to existing rights and the provisions specified above.

Your Right To Appeal

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do the following within 30 days of the date of receipt of the Order.

File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.

- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.
- You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel RD SW Ste 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

Signed at Yakima, Washington, this day of 2013.

Mark C. Schuppe, Operations Manager

For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov>. To find laws and agency rules visit the Washington State Legislature Website: <http://www1.leg.wa.gov/CodeReviser>.

INVESTIGATOR'S REPORT

Carolyn Comeau, Department of Ecology

Water Right Control Number CS3-145472CL

BACKGROUND

On February 27, 2012, Ecology accepted from Mr. Marty Hall, M&I Livestock, a consolidated application for the Irrigation Efficiencies Grants Program (IEGP) and Trust Water Rights Program (TWRP) concerning water right claim No. 145472. The proposed irrigation efficiency project would replace hand and wheel lines with a center pivot system and reduce the irrigated acreage from 18.40 acres to 16.70 acres thus reducing the amount of water diverted for irrigation purposes. The applicant seeks to add instream flow as a purpose of use and place water in the TWRP in perpetuity.

Attributes of Water Right Claim

Water Right Owner:	Wallace Robertson
Date of First Use Asserted on Claim:	Before 1890
Place of Use	<p>W ½SWNE; W ½NWSE; NW ¼SWSE all within Sec. 2 T.11N., R. 39 E.W.M. EXCEPTING right of way easement to Columbia County Rural Electric Assn., Inc., a corporation dated February 19, 1940.</p> <p>Also, beginning at the SE corner of the NW ¼ of Section 2 in T.11N., R. 39 E.W.M. thence north 80 rods, thence west 31 rods, thence south 160 rods, thence east 31 rods, thence north 80 rods to the place of beginning, reserving rights of way for irrigation ditches, and rights to go in upon said land to work on said ditches, said rights having been reserved in deed from Ross and wife in deed made by them to H.V. Swain dated May 11, 1901, recorded in Book "Y" of Deeds at page 313 of the records of deeds of Columbia County, Washington.</p> <p>SAVE and EXCEPT: All that portion lying and being between the northerly right of way line of the existing county road and a line drawn parallel with and 130 feet distant northerly, when measured at right angles, from the center line survey of said county road, and extending from the west line of said tract of land to a line drawn at right angles northerly from the center line of county road at a point approximately 235 feet westerly from the east line of said tract of land measured along said center line. Said Exception containing 0.66 acres, more or less, the same being that land sold to the State of Washington by deed recorded in Book 34 at page 449, records of Columbia County, Washington.</p> <p>SAVE and EXCEPT easement for highways and county roads.</p>
Water Right Owner:	Wallace Robertson

County	Waterbody	Tributary To	WRIA
Columbia	Tucannon River	Snake River	35-Middle Snake

Purpose	Rate	Unit	Ac-ft/yr	Begin Season	End Season
Irrigation	0.96	CFS	192	04/01	10/15

Source Name	Parcel	Well Tag	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Tucannon River	2-011-39-002-2450		11N	39E.W.M.	02	SE		

CFS = Cubic Feet per Second; Ac-ft/yr = Acre-feet per year; Sec. = Section; QQ Q = Quarter-quarter of a section; WRIA = Water Resource Inventory Area; E.W.M. = East of the Willamette Meridian; Datum in NAD83/WGS84.

REQUESTED Water Right Attributes

Applicant Name:	Marty Hall - M&I Livestock
Date of Application:	2/27/2012
Place of Use	E½SENW (portion of), W½SWNE, W½NWSE, NW¼SWSE, and the E½NESW (portion of) all in Sec. 2, of T. 11 N., R. 39 E.W.M.

County	Waterbody	Tributary To	WRIA
Columbia	Tucannon River	Snake River	35-Middle Snake

Purpose	Rate	Unit	Acre-feet/yr	Begin Season	End Season
Irrigation of 16.57	0.245	CFS	48.09	04/01	10/15
Instream Flow	0.713	CFS	25.62	04/01	10/15

Source Name	Parcel	Well Tag	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Tucannon River	2-011-39-002-2450		11N	39E.W.M.	02	SE	46.465260	-117.893670

Datum/NAD83

Legal Requirements for Requested Change

The following is a list of requirements that must be met prior to authorizing the proposed changes in Purpose of Use, Place of Use and Point of Diversion.

Public Notice

Chapter 90.03.280 RCW and Chapter 90.42 RCW require that notice of a water right application be published once a week, for two consecutive weeks, in a newspaper of general circulation in the county or counties where the water is to be stored, diverted and used. Notices of this application were published in the: Dayton Chronicle on December 26, 2012 and January 2, 2013 and, in the Whitman County Gazette, Walla Walla Union Bulletin and Franklin County Graphic on December 27, 2012 and January 3, 2013.

Consultation with the Department of Fish and Wildlife

Notices were given to the Department of Fish and Wildlife (DFW) on December 18 & 19, 2012 and March 21 and May 9 2013. No responses were received from DFW.

State Environmental Policy Act (SEPA)

A water right application is subject to a SEPA threshold determination (i.e., an evaluation whether there are likely to be significant adverse environmental impacts) if any one of the following conditions are met:

- (a) It is a surface water right application for more than 1 cubic foot per second, unless that project is for agricultural irrigation, in which case the threshold is increased to 50 cubic feet per second, so long as that irrigation project will not receive public subsidies;
- (b) It is a groundwater right application for more than 2,250 gallons per minute;
- (c) It is an application that, in combination with other water right applications for the same project, collectively exceed the amounts above;
- (d) It is a part of a larger proposal that is subject to SEPA for other reasons (e.g., the need to obtain other permits that are not exempt from SEPA);
- (e) It is part of a series of exempt actions that, together, trigger the need to do a threshold determination, as defined under WAC 197-11-305.

Because this application does not meet any of these conditions, it is categorically exempt from SEPA and a threshold determination is not required.

Water Resources Statutes and Case Law

RCW 90.03.380(1) states that a water right that has been put to beneficial use may be changed. The point of diversion, place of use, and purpose of use may be changed if it would not result in harm or injury to other water rights.

The Washington Supreme Court has held that Ecology, when processing an application for change to a water right, is required to make a tentative determination of extent and validity of the claim or right. This is necessary to establish whether the claim or right is eligible for change. *R.D. Merrill v. PCHB* and *Okanogan Wilderness League v. Town of Twisp*.

INVESTIGATION

The investigation process consisted of reviews of Ecology and other pertinent records and conversations with Conservation Commission and Conservation District staff and the applicant. A site visit was conducted by Carolyn Comeau and Tom Perkow, Ecology, on May 5, 2012. They met with the applicant, Mr. Hall, and Jack Myrick, Conservation Commission, and Terry Bruegman, Columbia County Conservation District and discussed the application and permitting process and verified the field and diversion locations.

History of Water Use

The site is located in southeast Washington, Columbia County, within WRIA 35 on the Tucannon River. The water right claim is in an un-adjudicated basin where water rights have not been confirmed by a Superior Court. It is in a fish critical basin with Endangered Species Act listings for the Tucannon River of: Snake River spring and summer run Chinook; Snake River Basin Steelhead and, Snake River Bull Trout. The Watershed Planning Unit developed recommended instream flows for the Tucannon River.

On June 30, 1974 Ecology accepted from Mr. Wallace Roberson a water right claim registration form that stated water was first put to use pre-1890 for irrigation of 48 acres of land. The claim also included the location of the diversion contour ditch. The claim was assigned the number S3-145472.

In a January 3, 2012 email correspondence, Jack Myrick, Conservation Commission Technical Staff, clarified that historically, a period of time occurred when only 20 of the original 48 acres of land were irrigated. Around 1969 or 1970 electrical power was installed and the entire 48 acres were irrigated with a pump and handlines.

As stated on the IEGP application, the last five years' water use consisted of 0.96 cubic feet per second (cfs) and an annual quantity (Qa) of 73.71 ac-ft. for irrigation of 18.40 acres of alfalfa/hay. Hand and wheel lines were used to irrigate the land. Based on pump power records water use was reported as 73.71 acre-feet/year.

On May 16 2012, Ecology completed an extent and validity review that tentatively determined the claim to be valid for 73.71 ac-ft/year of water for irrigation of 18.40 acres of land. This tentative determination was based on information from several sources including: Ecology's water rights database, LandSat satellite imagery, historic and current aerial photos and power records.

During the site visit, it was noted that the point of diversion currently in use is downstream from the original location stated on the 1974 water right claim.

Proposed Use

The intent of this application is to place a portion of the water right into the State Trust Water Rights Program (TWRP) in perpetuity. The applicant proposes to transfer 0.713 cfs and 25.62 ac-ft/yr of the water right to be used exclusively for instream flows and enhancement and maintenance of fisheries as allowed under Chapters 90.03, 90.42 and 90.54 RCW.

The change in irrigation type will allow greater control of irrigation water, with increased efficiency. For the 16.5 acre project site, the center pivot is expected to save a total of approximately 25.62 acre-feet/year. Additionally, 4.51 acre-feet/year of consumptively used water from the field corners that will no longer be irrigated will be available to place into the TWRP.

Ecology identifies the quantity held instream by volumes of monthly ac-ft (Qa) and instantaneous rate (Qi). To determine the monthly Qa, the Washington Irrigation Guide was used in tandem with the applicant's proposed transfer of 9.18 ac-ft/yr; $(9.18 \times \text{WIG\%/month} = \text{Qa/month})$. To determine the monthly Qi, the resulting Qa/month were converted to a rate of cubic feet per second $(\text{Qa/month} \times 325,851 \text{ gals} \div 31 \text{ days} \div 24 \text{ hrs} \div 60 \text{ min} \div 60 \text{ sec} = \text{cfs/sec})$

To determine the secondary reach's monthly water duties. A total of 9.18 ac-ft/yr is proposed to be transferred to instream flows. Establishing the percentage of water used throughout the irrigation season ultimately led to the a monthly acre-foot volume $(9.18 \times \text{WIG\%/month})$ monthly proportionate amount (Qa) and rate (Qi) of water use.

Hydrologic/Hydrogeologic Evaluation

Irrigation water is diverted from the Tucannon River at about river mile 18.2 which is where the primary reach approximately begins. The primary reach is about 4236 feet long and ends at approximately river mile 17.3. The secondary reach begins where the primary reach ends and continues to the confluence of the Snake and Columbia Rivers. The project proposes to leave up to 0.713 cfs/year and 29.40 acre-feet/year in the Tucannon River for instream flow purposes. 9.18 acre-feet of consumptive water would be made available in the secondary reach.

Trust Water Right Calculations

Extent and Validity

Since the water right claim is in an un-adjudicated area, the extent and validity of the claim have not been determined by a Superior Court. Ecology tentatively determined that the claim is valid for:

- Qa: 73.71 ac-ft/year for 18.40 acres of land for the irrigation season from April 1 through October 15.
- Qi: 0.96.

Estimated net water savings available to place in the Trust Water Program

To determine the amount of net water savings to be made available to the Trust Water Program, the following determinations were made by using calculations established in Ecology Policy 1210:

- The difference between the amounts of irrigation water applied to the crop pre and post irrigation efficiency (IE) practices.
- The difference between the amounts of irrigation water consumptively used pre and post IE practices.

Estimated irrigation water used pre-IE practices (for 18.4 acres of land)

- The 73.70 ac-ft total irrigation requirement (TIR) for 18.40 acres of land was determined by the applicant from their electrical power consumption records and confirmed by Ecology. When cross-referenced with the Washington Irrigation Guide (WIG), this number was found to be reliable.
- The 2.46 ac-ft/acre crop irrigation requirement (CIR) for alfalfa/hay for Dayton was determined from the WIG.
- The 45.26 ac-ft total crop irrigation requirement (CIR) was calculated by multiplying (2.46 ac-ft /acre) (18.4 acres).
- The 61% application efficiency (Ea) was calculated by dividing 45.26 total CIR/ 73.70 TIR.
- The 10% evaporated water loss (Ev) was determined from Guidance 1210 Table 1.
- The 71 % consumptive water use (%CU) was calculated by adding 0.61Ea + 0.10 Ev.
- The 52.33 ac-ft total CU was calculated by multiplying (73.70 TIR) (0.71 %CU).
- The 21.37 ac-ft total non-CU was calculated by subtracting (73.7 TIR)-(52.33 CU).

Estimated irrigation water used post-IE practices (for 16.57 acres of land)

The IE project reduces the amount irrigated acreage from 18.4 acres to 16.57 acres since the corner sections will not be irrigated.

1. The 2.46 ac-ft/acre crop irrigation requirement (CIR) for alfalfa/hay for Dayton was determined from the WIG.
2. The 40.76 ac-ft total crop irrigation requirement (CIR) was calculated by multiplying (2.46 ac-ft/acre) (16.57 irrigated acres).
3. The 92% application efficiency (Ea) was determined from Guidance 1210 Table 1.

4. The 44.30 ac-ft total irrigation requirement (TIR) for 16.57 acres of land was calculated by dividing the 40.76 CIR/.92Ea.
5. The 5% evaporated water loss (Ev) was determined from Guidance 1210 Table 1.
6. The 97 % consumptive water use (%CU) was calculated by adding 92%Ea + 5.0% Ev.
7. The 42.97 ac-ft total CU was calculated by multiplying (44.30 TIR) (0.97 %CU).
8. The 1.33 ac-ft total non-CU was calculated by subtracting (44.30 TIR)-(42.97 CU).

Estimated trust water available through the IE project:

- The 29.40 ac-ft of annual quantity in the primary reach was calculated by subtracting pre and post TIRs: 73.70 -44.30
- The 9.18 ac-ft of consumptive water in the secondary reach was calculated by subtracting pre and post CUs: 52.33-43.15

Trust Water Place of Use

The water quantities for the proposed trust water right apply to both the primary reach and the secondary reach. The primary reach is the portion of the waterbody that benefits from both the former consumptive use and former return flows of the water right. The secondary reach is the portion of the water body that benefits only from the former consumptive use portion of the water right. The primary reach is in the Tucannon River from a point located 2230 ft West and 2100 ft South of the NE¼ corner of Sec. 2. The primary reach is 4236 feet long. The secondary reach begins at the end of the primary reach and ends at the confluence of the Snake and Columbia Rivers.

Other Rights Appurtenant to the Place of Use

A review of Ecology's online water rights tracking system database indicated that there are no other water rights appurtenant to the place of use.

Impairment Considerations

Placing water into the Trust Water Program in the manner described in the application will not result in any impairment to existing users. There are no downstream users within the primary reach that may have previously relied on the return flow water that is being placed into trust.

Public Interest Considerations

Approval of this application would not be contrary to the public interest. Placing water into trust provides additional flows to benefit resident and anadromous fish stocks that utilize the Tucannon River for rearing and habitat.

Consideration of Protests and Comments

No protests were received against this application.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that this request for an acceptance of a portion of CS3-145472CL into the Trust Water Program be approved in the amounts and within the limitations listed below and subject to the provisions listed above.

Purpose of Use and Authorized Quantities

The amount of water recommended is a maximum limit and the water user may only use that amount of water within the specified limit that is reasonable and beneficial:

Instream Flow

0.713 cfs and 29.40 acre-feet/ year

9.18 acre-feet/year consumptive water in the secondary reach

Irrigation

0.245 cfs and 44.31 acre-feet/year for 16.57 acres of land

Point of Diversion

SE¼, Section 2, Township 11 North, Range 29E.W.M.

Place of Use

As described on Page 1 of this Report of Examination.

Report Writer

Date

If you need this publication in an alternate format, please call Water Resources Program at (360) 407-6600. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.